

HOANG MINH TRAN

(Name)

P.O.Box 8101

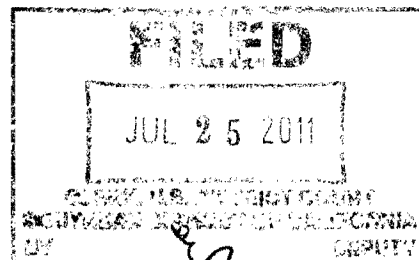
(Address)

San Luis Obispo, Ca 93409-8101

(City, State, Zip)

AA-5994

(CDC Inmate No.)



## United States District Court Southern District of California

HOANG MINH TRAN

(Enter full name of plaintiff in this action.)

Plaintiff,

v.

FILE DOEWILSON DOEBROWN DOEJOHN GILL

(Enter full name of each defendant in this action.)

Defendant(s).

Case No. 10cv2682-BTM (BLM)

(To be supplied by Court Clerk)

**FIRST AMENDED**  
Complaint under the  
Civil Rights Act  
42 U.S.C. § 1983

Hon. Barry T. Moskowitz  
Hon. Barbara L. Major

### A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.  
42 U.S.C. §§ 1985, 1986

### B. Parties

1. **Plaintiff:** This complaint alleges that the civil rights of Plaintiff, HOANG MINH TRAN, who presently resides at CMC-East P.O.Box 8101, were violated by the actions of the below named individuals. The actions were directed against Plaintiff at George F. Bailey Detention Facility (GFFDF) on (dates) 8/1/09, 8/6/09, and 8/12/09.

(institution/place where violation occurred)                      (Count 1)                      (Count 2)                      (Count 3)

**C. Causes of Action** (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

**Count 1:** The following civil right has been violated: DENIED EQUAL PROTECTION, FREE-  
(E.g., right to medical care, access to courts,  
DOM OF SPEECH, DUE PROCESS CLAUSE, FREEDOM FROM CRUEL AND UNUSUAL  
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,  
etc.) PUNISHMENT.

**Supporting Facts:** [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

**Defendant** Brown was a Deputy working under color of state authority at George F. Bailey Detention (GPRDF). On August 01, 2009 when he deliberately deprived Mr. Tran's of his hygiene items which are required by the jail officials, next Plaintiff verbally complained to Deputy Wilson to help him out for the important of hygiene items which are necessity for Mr. Tran's well-being and sanitary cleanliness requirement, he too denied Tran. Subsequently thereafter Sergeant Pile enter the 'ASU' 5A Module as he approach Mr. Tran's cell #101. Immediately Plaintiff clearly explaining to Pile "Sergeant your Deputies Brown and Wilson retaliated against me by not given me a welfare package while they given every inmates, I even showed them my receipt that said 'I had \$.70 cents in my account, thereby I'am a indigent inmate and qualify to receive the items.' " Although Pile agreed to give Mr. Tran a hygiene package but at the end Plaintiff did not get one. (which consider deceive on Pile words.) The jail officials knowingly denied Mr. Tran equal protection which was creating a extraordinary hardship for Plaintiff's daily life, (Tran) already being punishment by force to be solitary confinement 24/7 because of the 'Alleged' role on a high-profile escape by another similarity named inmate that the authority wrongful released on 10/29/2008 under Plaintiff's wife bail bond money. (See Declaration of Hoang Minh Tran) Which the jail officials did not given any due process hearing on the fact-finder allegation. Being isolation inside the 9'x11' feet cell with no other

1 mean of sanitary his body what-so-ever, this punishment amounted  
2 to 'Cruel and unusual punishment' there should be no reason why  
3 a pretrial detainee have to subjected to any punitive punishment  
4 under the protection of his federal constitutional rights for 19  
5 long days without affording Mr. Tran the essence of the hygiene  
6 necessity as well as deprived any due process of law ( i.e. admin-  
7 istrative grievance complaints see exhibit 'A') were ever positi-  
8 vely resolved until the next supervisor sergeant. Where Mr. Tran  
9 had to endured significant harsh treatment without brushing his  
10 teeth, wash his hair and body on top of being isolated from the  
11 general population inmates, therefore Mr. Tran could not have the  
12 mean to borrow from other peer inmates. In despite to his adminis-  
13 trative grievance complaints for immediate relief no respond or  
14 reply was ever return to aid this deprivation. This did not meet  
15 basic sanitation standards. This sub-standard living creates uns-  
16 afe and unsanitary living condition caused Tran's daily life into  
17 a " Living hell" on top of Mr. Tran frail health.( A deteriorate  
18 of Mr. Tran's degenerate of assaulted post-operative hernia inju-  
19 ry on 03/02/2009 incident see Declaration of Hoang Minh Tran.)  
20 This also would amount to taking of personal property from Mr. Tr-  
21 an or denied his lawful possession of necessity belong which is  
22 a violation of the Due Process Clause of the Federal Constitution  
23 's Fourteenth Amendment and Title 42 U.S.C. § 1983. Because the  
24 named defendants continues to recklessnessly disregarded the sub-  
25 tainal risk of Mr. Tran's well-being and health. Thereby, respect-  
26 fully request this court to bring this matter out in the light,  
27 in hope this unconstitution acts does not happen to the next vic-  
28 tim(s) under their state authority law.

**Count 2:** The following civil right has been violated ~~DENIED MEDICAL CARE, DUE PROCESS~~  
(E.g., right to medical care, access to courts,  
~~FREEDOM OF SPEECH, and FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT~~  
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,  
etc.)

**Supporting Facts:** [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 2.]

~~This incident arises from a serious constitutional violations at~~  
~~George F. Bailey Detention Facility (GFBDF). From June 01, 2009 to~~  
~~August 06, 2009, Mr. Tran was denied of his external hemorrhoids~~  
~~medication (Docusate Sodium 100 MG) by defendants' John Gill, M.D.~~  
~~Jane Doe M.D., Lizzie Womack, and Sarandi Marina (R. Nurse) of~~  
~~San Diego County Medical Division. In despite to Plaintiff verbal-~~  
~~ly complaining to Administrative Sergergation Unit ('ASU') 5A Ro-~~  
~~ver Deputies (John Doe(S))1-3) and nurses whom were deliver daily~~  
~~medications to inmates and also written grievaces on the matter~~  
~~to (GFBDF) supervisory from the San Diego County Sheriff's Depart-~~  
~~ment (See exhibit 'B'). Nonetheless the above defendants acting~~  
~~deliberatedly indifference to Mr. Tran's medical needs. Althought~~  
~~the jail officials more than aware of the vulnerability of Plain-~~  
~~tiff frail health condition, continues consciously disregarded an~~  
~~excessive risk to Mr. Tran's health and safety or well-being.~~  
~~Like others, prisoner have the constitutional rights to petition~~  
~~the government for redress of their grievances which includes a~~  
~~reasonable in respond on adminstrative complaints. Mr. Tran plea-~~  
~~ding to the (GFBDF) jail officials (supervisory) for immediate~~  
~~intervention of the ongoing deprivation of his serious medical~~  
~~needs. I.D. This constitute a violation of Mr. Tran's First and Fou-~~  
~~rteenth Amendments protected under the United States Constitution.~~  
~~Due to the relevance facts that the jail officials has purposeful-~~  
~~ly failed to acts to his dire grievance petitions for more than~~  
~~sixty-five (65) painful days without any action relief what so ev-~~  
~~er. That Mr. Tran had specifically request for I.D. (See Declarati-~~  
~~on of Hoang Minh Tran) which he will also show this court that all~~

1 of the named defendants acting maliciously in retaliation for his  
 2 'Alleged' high-profile escape (10/29/2008) which caused a deep  
 3 public embarrassment for the jail officials. Plaintiff will produce  
 4 direct evidence(s)' of motivation or more probable scenario alle-  
 5 ge chronology of events from which retaliation may plausibly be  
 6 inferred. 42 U.S.C.A. § 1983, David V. Hill, 401 F.Supp 2d, 749  
 7 (SD Tex 2005). Due to this deprivation causing Plaintiff inaction  
 8 to his necessitate medication and in a state of hurtful physical  
 9 when bowel movement bleeding from his rectum ( A streaks of bright  
 10 red blood are found on the toilet paper and in the stool.) This  
 11 experienced are uncomfortable and painful (Especially due to slow  
 12 recovery to post-operative hernia injured on 03/02/2009 incident.)  
 13 and when without a medication Plaintiff's hemorrhoids protudes  
 14 from anus one inch and half to his anal area was also itchy and a  
 15 muscus discharge often seen.

16 The physical and mental suffering that Mr. Tran endured amount to  
 17 "Cruel and unusual punishment," was protected by Eighth and Four-  
 18 teenth Amendments, U.S.C.A. 8, 14. At one point of the retaliation  
 19 was so extreme. Plaintiff was living in constant of fears and int-  
 20 imidations for his well-being and personal safety. See Case No. 10-\*

21 1. Plaintiff also pled that, "[t]here should be no problem in fi-  
 22 ding the supervisor(s)' deputies, doctor(s)' and nurse(s)'. Whom  
 23 worked at (GFBDF) 'ASU' Module 5A from 6/01/2009 to 8/06/2009. ~~Tran~~  
 24 informed the court that all the John Doe(s)' and Jane Doe(s)' ind-  
 25 enity(s)' could be determined by inspecting the "Duty Roster" for  
 26 that period." Plaintiff also expressed his intention to subpoena  
 27 this information and "Amend the complaint later with the correct  
 28 information data."



Count 3: The following civil right has been violated: FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT, DUE PROCESS, EQUAL PROTECTION and FREEDOM OF SPEECH. (E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 3.]

Plaintiff realleges and incorporates by reference on the original complaint (Doc.5) as though fully set forth herein. Defendants  
Deputies Brown Doe, Wilson Doe, were working under color of state  
law on 8/06/2009 whom were unlawfully confiscated Mr. Tran's perso-  
nal property, causing Plaintiff to suffered severe emotional dist-  
ress of anxiety attacks which are harmful to Plaintiff body to end-  
ured in his 9'x11' cell alone without any mental medical care.  
Subjected Plaintiff to endured without any rights to his Catholic  
religious practice as important mentally as well as physically for  
Plaintiff daily function as a human being. Thereby violated Mr. Tr-  
an First, Fourteenth Amendments rights of speech and freedom of  
religious believed, by confiscated his Holy Bible without the leg-  
itimate penological objectives of the correction system.<sup>2</sup>

Furthermore when petition to the jail official govement for redre-  
ss, this incident in specifically requested to have his property  
return, but nonetheless the supervisor(s) John Doe(s)'; watch  
commander and sheriff's William Gore all ignored and failed to act  
to injuntive relief this deprivation of Mr. Tran's constitution  
rights to be positively resolved without further retaliation condu-  
ct from their subordinate duputies. (See Exhibit 'B').

In the present case Plaintiff here, have alleged facts or the tru-  
th incidents and forensic evidence to support the sustainate a §  
1983, 1985 and 1986 claims under Logan, Havgood and Monell trilogy.  
Mr. Tran's complaint alleges that the above named defendants inten-  
tional acts with maliciously resulted in substantial civil rights  
violation upon Plaintiff and continuing conducting a retaliation.

2. CA P/C § 4027 (2010) "Prisoner's Have Rights To Exercise of Religi-  
 ous Freedom."

1 against Plaintiff's "Alleged" high-profile escape that has made  
 2 a deep public embassments by the local news media attention. (On  
 3 10/30/2008) for the San Diego County Sherrif's Department person-  
 4 nels and GFBDF jail officials such as staff personnels (i.e. nu-  
 5 rses, doctor and deputies) acting in reprisal in against Plainti-  
 6 ff's constitutional rights by deprived Mr. Tran's of his due proc-  
 7 ess clause protection, medical care and severely subjected him  
 8 to "Cruel and Unusual Punishment" which is a clear violation to  
 9 his First, Fifth, and Eighth and Fourteenth Amendments and Title  
 10 42 U.S.C. § 1983. Plaintiff also positively maintains that these  
 11 acts were also "GreenLight" or ignored the after the facts of su-  
 12 ch high-risk of been subjected to assault, denied of medical care  
 13 , deprivation of the rights to possession of his legal property as  
 14 well as due process on wrongfully confinement in placement at 'ASU'  
 15 5A cell 211 without affording a hearing on the aiding and abetti-  
 16 ng a prisoner escape penal code § 4534 whatsoever. (See Declarat-  
 17 ion of Hoang Minh Tran) which had chronology events well document  
 18 has being set for the truthful incidents of the unconstitutional  
 19 conducts that were authorized by the San Diego County Sheriff's  
 20 Department supervisor(s)' and San Diego County Official (See Ex-  
 21 hibit 'G') was carried out under authority of law i.d.

22 Here Plaintiff have based his claim for liability directly on  
 23 unconstitutional policies, practices or customs and not on the  
 24 doctrine of respondeat superior, it is erroneous for a district  
 25 court to dismiss defendant Schoroeder and Sheriff's Gore. See  
 26 Sanders V. Kennedy, 794 F2d 478 (9th Cir.1986) also see Ca Penal  
 27 Code (2010) §831.5(a) quoting "Super~~v~~isory who has the authority  
 28 and responsibility for maintaining custody of prisoners and perf-

orms tasks related to operation of a local detention facility used for the detention of persons usually pending arraignment for upon court-order either for their own safekeeping<sup>3</sup> custody officers of a county shall of employees of and under the authority of the sheriff...? Being labeled "Escape" in jail environment can pose threat to inmate's health and safety in violation of Eighth Amendment, and Fourteenth Amendment for pretrial detainee U.S.C.A. Const.Amends. 8,14 and 42 U.S.C. § 1983 (See David V. Hill 401,F. Supp 2d. 749(SD Tex 2005)).

For hereinafter Plaintiff has state a merit claim for retaliation conducts by all named defendants' which are lie at the heart of these unconstitution acts (Claim 1,2,and 3.). Thereby Mr.Tran respectfully requesting this court to bound with it judicial authority power to bring these jail officials to answer to their misconducts in the court of law. Justice is long overdue and it must not be delayed any further.

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3. "When jail officials were awared of danger to Plaintiff's health and safety. such as when pretrial detainee Tran was wrongful accused of participate in the aiding and abetting a prisoner escape investigation, it violates constitution prohibition against cruel and unusual punishment due to the relevance fact that the supervisory(s)' failed to acts and afford Mr.Tran a reasonable protection.I.P.

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**D. Previous Lawsuits and Administrative Relief**

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: N/A

Defendants: \_\_\_\_\_

(b) Name of the court and docket number: \_\_\_\_\_

(c) Disposition: [ For example, was the case dismissed, appealed, or still pending?] \_\_\_\_\_

(d) Issues raised: \_\_\_\_\_

(e) Approximate date case was filed: \_\_\_\_\_

(f) Approximate date of disposition: \_\_\_\_\_

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☒ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

Mr. Tran did filed many of the administrative grievances for injunctive relief, but sinced of staus quo or label as the "Alleged" high-profile escape the GFBDF jail officials' and supervisory(s)' basically short-circuit or stonewalling all of his legal due process clause protection, i.e. when he filed the internal grievances complaining in the forms of 'citizen complaint form' and in the form of J-22 (Rev11/05) rarely, in factly the problem of abusive maltreatment went unanswered and ignored or reply. Furthermore he also lodged complaint to the Citizen Law Enforcement Review Board ; Internal Affairs Unit ; County of Sand Diego County Attorney Office of Bonnie Dumanis and State of California Department of Justice. Thus, none of the higher authority could help Mr. Tran out in anyway or shape of form to relief his constant of retaliation misconduct by the GFBDF jail officials. In despited of his true encounter incidents.

**E. Request for Relief**

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): All named and John Doe(s)'  
defendants' in this suit also praying for a court to issue a 'Pro-  
tect-Order' and future reprisal from this legal action and 'Pestra-  
ined-Order' without contact whatsoever upon release back to San  
Diego at the end of this year. (12/25/2011).

2. Damages in the sum of \$ 3,000,000.00

3. Punitive damages in the sum of \$ Shall the Judge decide.

4. Other: Motion for refferral of Pro-Bono Counsel and prov-  
ide Mr. Tran with a list of active attorneys whom specialize in  
civil rights Acts litigation. Also Attorneys Fees arise from this  
case. 28 U.S.C. § 1920, 1924.

**F. Demand for Jury Trial**

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

**G. Consent to Magistrate Judge Jurisdiction**

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☐ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☒ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

July 4, 2011

Date

Signature of Plaintiff